

Department of Veterans Affairs

§ 13.70

for the needs of the veteran and obviate need for appointment of another type of fiduciary.

[40 FR 54248, Nov. 21, 1975]

§ 13.62 Payment to bonded officer of Indian reservation.

Any benefits due an incompetent adult or minor Indian, who is a recognized ward of the Government, may be awarded to the superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under 25 U.S.C. 14.

[40 FR 54248, Nov. 21, 1975]

§ 13.63 Payment to custodian-in-fact.

All or any part of a benefit due a minor or incompetent adult, payment of which is suspended or withheld because payment may not be properly made to an existing fiduciary, may be paid temporarily to the person having custody and control of the beneficiary.

[36 FR 19023, Sept. 25, 1971]

§ 13.64 Fiduciary commissions.

Generally, a VA appointed fiduciary is to be encouraged to serve without fee.

(a) *Authority.* The Veterans Services Officer is authorized to determine when a commission is necessary in order to obtain the services of a fiduciary, except that the Veterans Services Officer may not authorize a commission to a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services on behalf of the beneficiary. Necessity is established only if the beneficiary's best interest would be served by the appointment of a qualified professional, or, if a qualified professional is not available, the proposed fiduciary is the only qualified person available and is not willing to serve without a fee.

(b) *Amount; notice to beneficiary.* The Veterans Services Officer shall authorize a fiduciary to whom a commission is payable under paragraph (a) of this section to deduct from the beneficiary's estate a reasonable commission for fiduciary services rendered. The commission for any year may not exceed 4 percent of the monetary benefits paid by VA on behalf of the beneficiary to the fiduciary during that

year; a year being the normal 12 month period following the anniversary date of appointment. The Veterans Services Officer shall furnish appropriate notice to the beneficiary, either directly or through the fiduciary, that a commission is payable.

(c) *Persons who may be excluded.* Commissions may not be authorized to dependents of the beneficiary or other close relatives acting in a fiduciary capacity on behalf of the beneficiary, except under extraordinary circumstances.

(Authority: 38 U.S.C. 5502; Pub. L. 98-223)

[51 FR 26157, July 21, 1986]

§ 13.69 Limitation of beneficiaries to individual fiduciary.

For purposes of payment of Department of Veterans Affairs benefits, the number of beneficiaries for whom an individual fiduciary may act will be limited to the number the fiduciary may be reasonably expected to properly serve. When, in the judgment of the Veterans Services Officer, a fiduciary has been appointed or is seeking appointment in a case in excess of that number, the Veterans Services Officer will initiate action to obtain a suitable substitute fiduciary.

[40 FR 54248, Nov. 21, 1975]

§ 13.70 Apportionment of benefits to dependents.

(a) *Incompetent veterans being furnished hospital treatment, institutional or domiciliary care by United States or political subdivision thereof.* (1) When compensation, pension or emergency officers' retirement pay is payable in behalf of a veteran who is incompetent or under other legal disability by court action, the Veterans Services Officer may recommend such apportionment to or in behalf of the veteran's spouse, child or dependent parent as may be necessary to provide for their needs.

(2) When payment of compensation, pension or emergency officers' retirement pay, in behalf of a veteran rated incompetent by the Department of Veterans Affairs by reason of mental illness has no spouse or child and is being furnished hospital treatment, institutional or domiciliary care by the United States or a political subdivision

thereof, has been stopped because his or her estate equals or exceeds \$1,500, the Veterans Services Officer may recommend the payment of so much of the benefit otherwise payable as is necessary to provide for the needs of dependent parent or parents. (See §§ 13.74(b) and 13.108(b).)

(b) *Dependent parents.* When the compensation of a veteran paid to his or her fiduciary includes an additional amount for a dependent parent or parents and the fiduciary neglects or refuses to make an equivalent contribution for their support, the Veterans Services Officer may recommend the apportionment to the parent or parents of the additional amount.

(c) *Payments withheld because of fiduciary's failure to properly administer veteran's estate.* When payments of compensation, pension or emergency officers' retirement pay in behalf of a veteran have been stopped because of the fiduciary's failure or inability to properly account or otherwise administer the estate, the Veterans Services Officer may recommend the apportionment to the veteran's spouse, child or dependent parent of any benefit not paid under an institutional award or to a custodian-in-fact.

[40 FR 54248, Nov. 21, 1975, as amended at 51 FR 26158, July 21, 1986]

§ 13.71 Payment of cost of veteran's maintenance in institution.

(a) *By institutional award.* (1) The payment of part of compensation, pension or emergency officers' retirement pay for the cost of a veteran's hospital treatment, institutional or domiciliary care in an institution operated by a political subdivision of the United States may be authorized as provided in paragraph (a)(2) of this section when:

(i) The veteran is rated incompetent by the Department of Veterans Affairs.

(ii) It has been determined the veteran is legally liable for the cost of his or her maintenance, and

(iii) The institution's representative has asserted or probably will assert a claim for full maintenance costs.

(2) Subject to these conditions and the further condition that the responsible official of the institution or political subdivision will agree not to assert against Department of Veterans Affairs

benefits any further claim for maintenance during the veteran's lifetime, the Veterans Services Officer may agree with such official to the payment of the veteran's benefits through an institutional award to be applied to:

(i) A monthly amount determined by the Veterans Services Officer to be needed for the veteran's personal use,

(ii) An amount to be agreed upon to be accumulated to provide for the veteran's rehabilitation upon release from the institution, and

(iii) So much of the amount of the benefit as remains not exceeding the amount the Veterans Services Officer shall determine to be the proper charge as fixed by statute or administrative regulation, to the cost of the veteran's maintenance.

(3) Upon execution of an agreement as provided in paragraph (a)(2) of this section, the Veterans Services Officer may certify to the Adjudication Division the total amount to be released to the chief officer of the institution.

(b) *By care and maintenance award.* When payment of compensation, pension or emergency officers' retirement pay in behalf of a veteran rated incompetent by VA, who has no spouse or child and is being furnished hospital treatment, institutional or domiciliary care by a political subdivision of the United States, has been stopped because his or her estate has reached \$1,500, the Veterans Services Officer may certify to the Adjudication Division the amount to be released to the responsible official to pay for the cost of the veteran's current care and maintenance. The amounts paid in such cases shall not exceed the amount of the benefit otherwise payable less any amounts apportioned to dependent parents and in no event exceed the amount which the Veterans Services Officer shall determine to be the proper charge as fixed by statute or administrative regulation. (See §§ 13.74(b) and 13.108(b).)

(Authority: 38 U.S.C. 501)

[40 FR 54248, Nov. 21, 1975, as amended at 51 FR 26158, July 21, 1986]

§ 13.72 Release of funds from Personal Funds of Patients.

Veterans Services Officers may authorize release of funds from Personal